

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

8 * * *

9 STEVEN BRAUNSTEIN,

Case No. 2:19-cv-01253-GMN-BNW

10 Petitioner,

ORDER

11 v.

12 JAMES DZURENDA, et al.,

13 Respondents.

14 Petitioner Steven Braunstein has submitted a petition for a writ of habeas corpus
15 (ECF No. 1-1). His application to proceed in forma pauperis is granted.

16 Petitioner has challenged the same amended judgment of conviction in at least
17 four previous actions filed in this court: 3:11-cv-00587-LRH-WGC; 3:13-CV-00666-
18 MMD-WGC; 2:14-cv-00853-JCM-VCF; 2:15-cv-00947-RFB-NJK. In the first action
19 listed, this court dismissed the habeas petition because all of the claims were
20 procedurally defaulted. The second, third, and fourth habeas petitions listed here were,
21 therefore, second or successive habeas corpus petitions. *Henderson v. Lampert*, 396
22 F.3d 1049, 1053 (9th Cir. 2005). Petitioner was required to obtain authorization from the
23 court of appeals before he could proceed with a second or successive petition. 28
24 U.S.C. § 2244(b)(3). This court dismissed both petitions because petitioner did not
25 have such authorization. Petitioner again lacks such authorization here, and this
26 petition shall also be dismissed with prejudice as second and successive.¹

27
28 ¹ Braunstein first filed this petition in the Ninth Circuit Court of Appeals (see ECF No. 1-2). That court transferred it here merely because on its face it is an original petition, which would have to be filed here.

1 Reasonable jurists would not find this conclusion to be debatable or wrong, and
2 the court will not issue a certificate of appealability.

3 **IT IS THEREFORE ORDERED** that petitioner's application for leave to proceed
4 in forma pauperis (ECF No. 1) is **GRANTED**.

5 **IT IS FURTHER ORDERED** that the Clerk shall **DETACH** and **FILE** the petition
6 (ECF No. 1-1).

7 **IT IS FURTHER ORDERED** that the petition is **DISMISSED** with prejudice as a
8 successive petition.

9 **IT IS FURTHER ORDERED** that petitioner's motion for appointment of counsel
10 (ECF No. 3) is **DENIED** as moot.

11 **IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**.

12 **IT IS FURTHER ORDERED** that the Clerk shall **ENTER JUDGMENT** accordingly
13 and close this case.

14
15
16
17 DATED: 6 August 2019.

18
19 
20 GLORIA M. NAVARRO, CHIEF JUDGE
21 UNITED STATES DISTRICT COURT
22
23
24
25
26
27

28 _____
However, what Braunstein is required to do is not merely file a petition in the appeals court but seek authorization from the appeals court to file a second and successive petition in this court.